IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7258 OF 2004

Smt. Ramtajidevi U. Singh
and Anr. ..Petitioners

Vs.

Shri Ramashankar Rambharat Singh
and ors. ..Respondents

Mr. R.R. Sharma for petitioners.
Mr. B.A. Singh for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 28, 2007.

P.C.:

1. This petition filed under Article 227 of the Constitution impugns the order dated 28/3/2003 passed by the learned Judge of the Small Causes Court at Bombay thereby discharging Interim Notice No.4231 of 2002 in RAD Suit No. 226 of 1993. The said Interim Notice was filed by the present petitioners praying for stay to the trial of the suit till First Appeal No. 492 of 1997 pending before this Court is decided. The learned Judge of the Small Causes Court observed that in Civil Suit No. 344 of 1992, which led to

First Appeal No. 492 of 1997 having been filed before this Court, the City Civil Court had granted a declaratory decree in as much as the plaintiffs therein were declared to be the owners of the business being run in the suit premises and that the defendant therein, who is the plaintiff in RAD Suit No. 1076 of 1993 was declared as conductor of the business and the filing of the suit subsequently under the Bombay Rent Act seeking to exercise the tenancy rights directly from the landlord and the landlord was not made a party in the suit decided by the City Civil Court would not really have any bearing. In any case, during the last four years no steps have been taken by the present petitioners to get the First Appeal listed for final hearing before this Court and even otherwise when the trial of RAD Suit No. 1076 of 1993 starts, the present petitioners are not stopped from bringing on record the Judgment and Decree passed by the City Civil Court regarding the declaration of ownership in respect of the suit business and not the suit tenanted premises.

2. The view taken by the Lower Court in

discharging the Interim Notice cannot be termed as perverse or patently erroneous so as to cause interference under Article 227 of the Constitution. Even otherwise, as of now, the parties and more particularly the petitioners must take appropriate steps to get the First Appeal listed and decided at the earliest.

3. The petition is rejected summarily.

(B.H. Marlapalle,J.)